
HOUSE BILL No. 1785

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-9-35.

Synopsis: RTA food and beverage tax. Authorizes a county that has established a regional transportation authority (RTA) to impose a 1% food and beverage tax to fund the authority. Restricts the use of the revenue to: (1) providing new and improved public surface and rail transportation services; and (2) transfers to the county airport authority. Requires a local government unit in a county imposing the tax to continue its current level of financial support of public surface and rail transportation services after the tax is imposed. Requires the RTA board to study the feasibility of alternative funding sources.

Effective: July 1, 2005.

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January 19, 2005, read first time and referred to Committee on Ways and Means.

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Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE BILL No. 1785

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 6-9-35 IS ADDED TO THE INDIANA CODE AS
- 2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2005]:
- 4 **Chapter 35. Regional Transportation Authority Food and**
- 5 **Beverage Tax**
- 6 **Sec. 1. This chapter applies to a county that has established an**
- 7 **authority.**
- 8 **Sec. 2. As used in this chapter, "authority" refers to a regional**
- 9 **transportation authority established under IC 36-9-3-2.**
- 10 **Sec. 3. As used in this chapter, "beverage" includes any**
- 11 **alcoholic beverage.**
- 12 **Sec. 4. As used in this chapter, "commuter transportation**
- 13 **district" refers to a commuter transportation district established**
- 14 **under IC 8-5-15.**
- 15 **Sec. 5. As used in this chapter, "food" includes any food**
- 16 **product.**
- 17 **Sec. 6. As used in this chapter, "fund" refers to a food and**

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1 beverage tax receipts fund established under section 17 of this
2 chapter.

3 Sec. 7. As used in this chapter, "gross retail income" has the
4 meaning set forth in IC 6-2.5-1-5.

5 Sec. 8. As used in this chapter, "person" has the meaning set
6 forth in IC 6-2.5-1-3.

7 Sec. 9. As used in this chapter, "public transportation service"
8 refers only to public surface and rail transportation service.

9 Sec. 10. As used in this chapter, "retail merchant" has the
10 meaning set forth in IC 6-2.5-1-8.

11 Sec. 11. As used in this chapter, "unit" refers to a city, town, or
12 county.

13 Sec. 12. (a) The fiscal body of a county may adopt an ordinance
14 to impose an excise tax, known as the regional transportation
15 authority food and beverage tax, on a transaction described in
16 section 13 of this chapter.

17 (b) If a fiscal body adopts an ordinance under subsection (a), it
18 shall immediately send a certified copy of the ordinance to the
19 commissioner of the department of state revenue.

20 (c) If a fiscal body adopts an ordinance under subsection (a), the
21 regional transportation authority food and beverage tax applies to
22 transactions that occur after the last day of the month that follows
23 the month in which the ordinance was adopted.

24 Sec. 13. (a) Except as provided in subsection (c), a tax imposed
25 under section 12 of this chapter applies to any transaction in which
26 food or beverage is furnished, prepared, or served:

- 27 (1) for consumption at a location, or on equipment, provided
- 28 by a retail merchant;
- 29 (2) in the county in which the tax is imposed; and
- 30 (3) by a retail merchant for consideration.

31 (b) Transactions described in subsection (a)(1) include
32 transactions in which:

- 33 (1) food or beverage is served by a retail merchant off the
- 34 merchant's premises;
- 35 (2) food is sold in a heated state or heated by a retail
- 36 merchant;
- 37 (3) the food consists of two (2) or more food ingredients that
- 38 are mixed or combined by a retail merchant for sale as a
- 39 single item (other than food that is only cut, repackaged, or
- 40 pasteurized by the seller, and eggs, fish, meat, poultry, and
- 41 foods containing these raw animal foods requiring cooking by
- 42 the consumer as recommended by the federal Food and Drug

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Administration in chapter 3, subpart 3-401.11 of its Food Code so as to prevent food borne illnesses); or

(4) a retail merchant provides eating utensils, including plates, knives, forks, spoons, glasses, cups, napkins, or straws, with the food that is sold (for purposes of this subdivision, a plate does not include a container or packaging used to transport the food).

(c) A food and beverage tax imposed under this chapter does not apply to furnishing, preparing, or serving any food or beverage in a transaction:

(1) that is exempt; or

(2) to the extent the transaction is exempt; from the state gross retail tax imposed under IC 6-2.5.

Sec. 14. The tax imposed on a transaction described in section 13 of this chapter equals one percent (1%) of the gross retail income received by the merchant from the transaction.

Sec. 15. The tax that may be imposed under this chapter shall be imposed, paid, and collected in the same manner that the state gross retail tax is imposed, paid, and collected under IC 6-2.5. However, the return to be filed for the payment of the tax may be made on separate returns or may be combined with the return filed for the payment of the state gross retail tax, as prescribed by the department of state revenue.

Sec. 16. The treasurer of state shall pay monthly the amounts received from the tax imposed under this chapter to the authority established in the county upon warrants issued by the auditor of state.

Sec. 17. (a) If a county imposes the tax under section 12 of this chapter, the authority established in the county shall establish a food and beverage tax receipts fund.

(b) The authority shall deposit in the fund all amounts received under this chapter.

(c) Any money earned from the investment of money in the fund becomes a part of the fund.

(d) Money in the fund may be used only for the purposes described in sections 18, 19, and 20 of this chapter.

Sec. 18. (a) Except as provided in section 19 of this chapter, money in the fund may be used only for the purpose of establishing and maintaining new or improved public transportation service in the county imposing the tax that exceeds the level of public transportation service available in the county in 2005.

(b) Subject to subsection (a), the expenditures for which money

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in the fund may be used include the following:

(1) Grants to units in the county imposing the tax to provide new or improved public transportation service.

(2) The costs of preparing plans, specifications, studies, surveys, and estimates of cost and of revenue for public transportation services.

(3) Any expense necessary or incident to planning, providing, or determining the need for or the feasibility and practicability of providing public transportation services.

(4) The cost of purchasing, leasing, subleasing, or otherwise acquiring, erecting, constructing, remodeling, renovating, completing, equipping, and furnishing any property.

(5) The cost of engaging architectural services, engineering services, legal services, incidental expenses, financing costs, underwriter's discounts, funded or capitalized interest, municipal bond insurance premiums, or debt service reserve funds related to the issuance of debt obligations.

(6) The payment of debt service.

(7) Operation and management of property.

(8) Other administration expenses of the authority.

(c) Money in the fund may not be used to provide tax relief to any person or to reduce the ad valorem property levies imposed by any governmental entity. For purposes of computing the ad valorem property tax levy limit imposed on a unit under IC 6-1.1-18.5-3, the unit's ad valorem property tax levy for a particular calendar year does not include any part of a grant provided to the unit under this chapter.

Sec. 19. (a) The authority established in a county imposing the tax under this chapter shall establish a reserve account in the fund.

(b) The authority shall deposit in the reserve account:

(1) two million dollars (\$2,000,000) in each of the first two (2) twelve (12) month periods in which the authority receives tax revenue under this chapter; and

(2) one million dollars (\$1,000,000) in each year thereafter.

(c) Subject to subsection (e), in each of the first two (2) twelve (12) month periods in which the authority receives tax revenue under this chapter, the authority shall transfer one million dollars (\$1,000,000) from the reserve account in the fund to the airport authority established under IC 8-22-3-1 in the county imposing the tax for purposes determined by the board of the airport authority.

(d) Subject to subsection (e), money in the reserve account of the fund not needed to comply with subsection (c) may be used only to

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1 make distributions to a commuter transportation district under
 2 this subsection. Money may be transferred to a commuter
 3 transportation district for the commuter transportation district to
 4 make capital expenditures for new or improved public
 5 transportation service that primarily benefits the county imposing
 6 the tax. Money transferred under this subsection may not be used
 7 to reduce or replace expenditures made in the county by the
 8 commuter transportation district from other sources.

9 (e) The authority may transfer money during a year in the
 10 amounts and at the times determined by the authority. Before the
 11 authority transfers money under subsection (c) or (d), the
 12 commuter transportation district must submit a written plan or
 13 amended plan to the authority for its review. The authority shall
 14 prescribe the format for plans and amended plans. The plan or
 15 amended plan must specify the nature and the amount of proposed
 16 expenditures from the money transferred under this section.
 17 Money transferred under this section may not be used for any
 18 purpose other than the purposes specified in the plan or amended
 19 plan.

20 (f) A commuter transportation district may submit a plan or an
 21 amended plan to the authority not more than once each month.
 22 The authority must review a submitted plan or amended plan as
 23 soon as practicable after its submission.

24 (g) If insufficient money is deposited in the fund to comply with
 25 subsection (b), the authority shall make the deposits as soon as
 26 practicable after sufficient money becomes available to make the
 27 required deposits.

28 (h) If a commuter transportation district is unable in any year
 29 to use the full amount of a transfer authorized under subsection (c)
 30 or (d), the unexpended amount remains available for transfer to
 31 the commuter transportation district when the commuter
 32 transportation district is able to expend the money in conformity
 33 with the purposes of the transfer.

34 Sec. 20. (a) This subsection applies to money that:

35 (1) is available in the fund beginning twenty-four (24) months
 36 after the authority begins to receive tax revenue under this
 37 chapter; and

38 (2) is not required to be deposited in the reserve account of
 39 the fund under section 19 of this chapter.

40 (b) In addition to any transfer of money under section 19 of this
 41 chapter, the authority may make additional distributions of money
 42 from the fund to a commuter transportation district only for

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capital expenditures for new and improved public transportation services in the county imposing the tax under this chapter.

(c) Before the authority transfers money under this section, the commuter transportation district must submit a written plan or amended plan to the authority for its review. The authority shall prescribe the format for plans and amended plans. The plan must specify the nature and the amount of the proposed expenditures.

(d) Money transferred under this section may not be used for any purpose other than the purposes specified in the plan or amended plan.

Sec. 21. (a) This section applies to a unit that is located in a county that imposes a tax under this chapter and that in 2005:

(1) imposed an ad valorem property tax levy; or

(2) expended money from an ad valorem property tax levy; for public transportation purposes.

(b) In any year in which a tax is imposed under this chapter, a unit may not reduce its ad valorem property tax levy or expenditures for public transportation purposes below the amount necessary to maintain a level of public transportation service equivalent to the level of public transportation service provided in 2004, as determined by the authority.

(c) The unit shall make a good faith effort to obtain all available federal funding to maintain public transportation services at a level at least equivalent to the public transportation services available in 2005.

(d) The department of local government finance shall modify budgets, tax rates, and tax levies under IC 6-1.1-17-16, as necessary, to implement this section.

SECTION 2. [EFFECTIVE JULY 1, 2005] (a) The board of a regional transportation authority established under IC 36-9-3-2 shall study the feasibility of the following revenue sources for the authority:

(1) A county supplemental auto rental excise tax.

(2) A local option cigarette tax.

(3) A local option fuel tax.

(b) Not later than June 30, 2006, the board shall report the results of its study under subsection (a) to the fiscal and legislative bodies of the county in which the regional transportation authority is established.

(c) This SECTION expires July 1, 2006.

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